

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)
37.40.307, 37.40.311, and 37.40.361)
pertaining to Medicaid reimbursement)
of nursing facilities)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 20, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-378 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1024 of the 2006 Montana Administrative Register, issue number 8.

2. The department has amended ARM 37.40.307 and 37.40.311 as proposed.

3. The department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS
FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) through (2)(c)
remain as proposed.

~~(d) The department shall make retroactive adjustment to the facility payment rate established on July 1, 2005 that will reduce the Medicaid per day payment amount by the amount of funds that have been designated for the direct care wage add-on for any nonparticipating or nonqualifying facility. Any amount paid by the department up to that time for the direct care wage add-on shall be recovered by the department.~~

(3) remains as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The department is taking this opportunity to delete obsolete language from ARM 37.40.361. In the first year of implementation, 1999, the department increased the nursing facility reimbursement rates to all providers beginning July 1, 1999. A provision for retroactive adjustment was included in case a facility was later found to be unqualified or elected not to participate. Now that additional payments have been implemented, the department no longer needs authority to make retroactive adjustments. It has elected to delete ARM 37.40.361(2)(d) rather than amend it.

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

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COMMENT #1: Since the acuity index used to reimburse providers is at least ten years old and no longer reflects the level of acuity experienced in nursing facilities, the department should update RUG groupings to reflect the new 53 RUG level groupings which took effect on January 1, 2006. The case mix weights for the 34 RUG III groupings is dated from 1995 through 1997. The time studies used as a criteria date from the same period. Since the Administrative Rules of Montana state: "the department may update the classification methodology to reflect advances in resident assessment or classification subject to federal requirements," I am assuming the department has the authority to change reimbursement criteria without legislative approval.

RESPONSE: The department's authority to adopt rules, and authority to set rates of reimbursement for Medicaid services is granted in 53-6-113, MCA. The Centers for Medicare and Medicaid Services (CMS) has undertaken a nursing facility staff time measurement study to recalibrate the Resource Utilization Groups (RUG-III) case mix weights, which support the Skilled Nursing Facility Prospective Payment System (SNF PPS). A new study, the Staff Time and Resource Intensity Verification (STRIVE), will be conducted onsite in nursing facilities starting this fall. The state of Montana will participate in this study.

The department declines to adopt the suggestion that it use the 53 RUG level grouper to set nursing facility reimbursement rates. The changes to the Medicare SNF PPS, effective on October 1, 2005, were based on 53 RUG groupings. The new Medicare SNF PPS is a refinement and expansion of the RUGs used to determine payments for Medicare beneficiaries in SNFs. The Medicare RUG changes were intended to more accurately pay SNFs for the care of residents with medically complex conditions by creating new payment categories that more closely match the kinds of services provided to them. However, they were not intended for Medicaid reimbursement and the department does not use them.

CMS will use the STRIVE time study to update the earlier studies and to recalibrate the Medicare RUG case mix weights based on the study results. Afterward, the department will review the results of the study, and if necessary will propose appropriate changes to the Montana case mix weights.

6. These amendments are effective July 1, 2006.

/s/ John Koch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State June 12, 2006.